Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules	)))))	CS Docket No. 98-120

REPLY COMMENTS OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

In response to the Commission's request for comment,[1] the Rural Independent Competitive Alliance ("RICA") files these reply comments in support the comments of the American Cable Association ("ACA") filed herein on March 2, 2008. As ACA and other commenting parties demonstrate,[2] the Commission will serve the public interest by establishing an exemption from the digital carriage requirement for small and capacity-limited cable systems.

I BACKGROUND

RICA is a national association of competitive local exchange carriers ("CLECs") that are affiliated with rural incumbent local exchange carriers ("ILECs"). RICA members provide facilities-based service in rural areas, including state-of-the-art telecommunications services over modern facilities to residential and business subscribers in underserved rural areas. Where RICA members enter the telecom-

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1 *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064 (2007) ("*DTV Must-Carry Order*" and "*DTV Third FNPRM*").

2 *See* Comments of the Office of Advocacy, US Small Business Administration ("US SBA"), filed March 3, 2008; Comments of Charter Communications, Inc. ("Charter"), filed March 3, 2008; Comments of the National Cable & Telecommunications Association ("NCTA"), filed March 3, 2008.

munications market on a competitive basis, they quickly achieve significant market share because the quality of service offered is vastly superior to the existing inadequate service over obsolete facilities.

Many RICA members and their ILEC affiliates also provide video programming services, including some that operate legacy cable systems with limited capacity. Accordingly, the Commission's actions in this docket are vitally important to RICA members and the public they serve. RICA urges the Commission to consider fully the impact of its rulemaking on all facets of the mythically uni-dimensional "consumer," including the consumer who inhabits rural and underserved areas of the country, and the consumer served by small businesses. To benefit and serve these consumers, sound public policy requires the establishment of a limited exemption to digital carriage requirements, as described below.

II AN EXEMPTION TO DIGITAL CARRIAGE REQUIREMENTS FOR SMALL OR CAPACITY-LIMITED COMPANIES IS THE RATIONAL REGULATORY APPROACH

RICA concurs with ACA's position that small systems (5,000 or fewer subscribers) and channel-locked systems (552 MHz or less capacity) should be exempt from the requirement to carry broadcast signals in digital format in the post-DTV transition world. Establishment of an exemption from digital carriage requirements will result in a two-fold ultimate benefit to customers served by these systems: (1) avoidance of the disproportionate cost-per-subscriber to be borne (i) directly, (ii) in the form of delayed introduction of advanced or upgraded services, or (iii) both; and (2) availability of greater programming diversity.

A. DTV Carriage is Costly

As demonstrated by ACA[3] and others,[4] digital transition costs are high, especially when expressed in a per-subscriber basis for a small system.[5] This additional expense, whether collected directly from subscribers or absorbed by the company, diverts the availability of capital from more general upgrade efforts. Delayed availability of capital, in turn, postpones the deployment of state-of-the-art facilities and expansion of service territories, leading to increases the gap between urban and rural consumers in terms of the timing of their access to advanced and/or competitive services.

Small and rural cable systems have every incentive to institute upgrades because of existing competitive pressure from satellite video delivery systems.[6] Timing constraints such as digital carriage deadlines that operate apart from competitive or market forces, however, introduce dramatic financial pressures. In extreme cases, such as those described by Charter,[7] a company may have no choice but to discontinue service rather than expend funds it has no hope of recovering.

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[3] *See* ACA Comments, pp. 2-3 and Exhibit 1 (analog-only systems face a minimum of $54,900 for upgrade costs associated with the first digital channel addition; digital systems lacking capacity face minimum upgrade costs of $28,600 for the first dual must-carry digital channel).

[4] *See*, *e.g.*, NCTA Comments, pp. 14-15.

[5] *See*, *e.g.*, Charter Comments, p. 8 ("Technical costs of $100,000 for a system with 100,000 subscribers is $1 per subscriber, which the Commission may consider to be 'modest.' But those same costs spread over 500 customers soars to $200 per customer . . . ." *See also,* US SBA Comments, p. 7 ("dual carriage requirements will have a disproportionate economic impact on the smallest carriers").

[6] *See, e.g.,* Comments of US SBA, n. 19 and accompanying text; *see also* Charter Comments, p. 4.

[7] *See* Charter Comments, p. 3 (discussing a system serving 33 subscribers: "The truth is those headend costs [technical expenses associated with upgrades necessary to offer a digital product on an analog system] could never be recovered . . . . It would make far more sense financially for Charter to terminate local cable service entirely").

Reduction in the availability of video programming clearly is not in the public interest, yet it is one likely by-product of the attempt to apply a single solution to the question of digital carriage. Because over-the-air reception of broadcast signals, analog or digital, typically is less reliable in rural areas, the ironic result of pressing uneconomic digital carriage upon small and capacity-limited rural systems may well be to limit access to broadcast signals for rural consumers generally by creating a regime in which the required carriage is too expensive to operate. RICA submits that rural consumers deserve a more even-handed approach.

B. Program Diversity is Compromised by Dual Carriage

Several commenting parties,[8] as does RICA, find it appropriate to emphasize that, consistent with the must-carry rules enacted under the *DTV Must-Carry Order*, must-carry signals will be available to all customers. In other words, there is no question regarding the availability of must-carry signals. It is, rather, the dual carriage requirement in general, and the digital carriage requirement in particular, that is here at issue. In addition to the expense of digital carriage, as described above, dual carriage in channel-locked systems is completely inconsistent with the public interest because it would act to deny the availability of additional and alternative programming to consumers. By definition, systems with limited channel capacity are today forced to choose among competing voices in an attempt to provide diversity and programming choices to subscribers. With must-carry stations occupying two channel positions under the digital carriage rule, this problem assumes crisis proportions and, in yet another ironic

[8] *See, e.g.*, ACA Comments, p. 4, and Charter Comments, p. 6.

twist, may ultimately result in compromising a system's ability to upgrade services or even survive by degrading the value of its current service to the point that subscribership falls, initiating a downward economic spiral. Again, rural consumers and small system customers, purportedly among the beneficiaries of the digital carriage rules, may be its ultimate victims.

C. The Waiver Process is Uneconomic

With the negative impact of imposition of digital carriage obligations on similarly-situated small and capacity-limited systems both clear and certain, the requirement that each affected cable system seek an individual waiver is wasteful, in terms of both public and private resources.[9] The savings in time and money, as well as the public interest in certainty and effective governing, all point toward the adoption of an exemption to the dual carriage requirement.

The Commission's authority to take this action is clear[10] – and its obligation to tailor appropriately its regulatory requirements to small business makes adoption of an exemption for small and channel-locked systems a regulatory imperative.[11] Such action is fully consistent with explicit public interest findings which underpin Congressional and Commission recognition of the limitations hampering smaller cable systems.[12]

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[9] Comparing the relative costs associated with emergency alert system expenditures, ACA noted that far less significant expenditures warranted the grant of hundreds of waiver requests with more immediate safety implications than those at issue here. ACA Comments, pp. 3-5. *See also* US SBA Comments, pp. 5-6.

[10] *See, e.g.*, NCTA Comments, pp. 17-20; Charter Comments, pp. 9-10.

[11] *See generally,* US SBA Comments, citing imperatives of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq*.

[12] *See, e.g.*, ACA Comments, n. 10 and accompanying text.

III CONCLUSION

RICA and its members are dedicated to meeting the challenge of providing advanced broadband and video services to sparse populations in an era of rapid technological evolution and shifting consumer demand. RICA joins with ACA in seeking the Commission's recognition of this challenge, and requests the Commission's grant of the digital carriage exemption as an appropriate methodology to accommodate the economic realities of rural service, and ensuring that rural consumers are among the beneficiaries of its digital programming policies.

Respectfully submitted,

THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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